



August 22, 2016

VIA ECF

The Honorable Brian Martinotti,
United States District Judge
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street
Room 2020
Trenton, NJ 08608

Re: *Invokana Cases bearing the docket numbers:*

**3:16-cv-01786-BRM-LHG
3:16-cv-01787-BRM-LHG
3:16-cv-01897-BRM-LHG
3:16-cv-01898-BRM-LHG**

Dear Judge Martinotti:

Counsel for plaintiffs in the above-referenced cases are in receipt of Call for Dismissal Orders instructing that the Defendant Mitsubishi Tanabe Pharma Corp. (“Tanabe”), named in each of the actions, will be dismissed for failure to provide notice of service of process within 90 days pursuant to Rule 4(m).

Defendant Tanabe, however, is an international foreign defendant excluded from the 90-day service requirement of Rule 4(m). Therefore, the undersigned counsel respectfully requests that the Call for Dismissal of Defendant Tanabe Orders in the above-referenced cases be withdrawn.

Specifically, Rule 4(m) provides an exception whereby “[t]his subdivision (m) does not apply to service in a foreign country under Rule 4(f) ...”. F.R.C.P. 4(m). Rule 4(f), in turn, provides for service pursuant to the Hague Convention, international agreement, or other international means, but the rule has no defined timeline for such service. *See* F.R.C.P. 4(f); *Madu, Edozie & Madu, P.C. v. SocketWorks Ltd. Nigeria*, 265 F.R.D. 106, 118 n. 2 (S.D.N.Y. 2010) (“There is no time limit by which service must be effected on a defendant in a foreign country pursuant to Rule 4(f).”)

As alleged in operative complaints in each of the above-referenced cases, Defendant Tanabe is a Japanese company. Dkt. No. 1 at ¶11 under each docket (“Defendant TANABE is a

Honorable Brian Martinotti

August 22, 2016

Page | 2

Japanese corporation with its principal place of business ... [in] Japan.”). Japan is a Hague Convention member. *Schiffer v. Mazda Motor Corp.*, 192 F.R.D. 335, 336 (N.D. Ga. 2000) (“The United States and Japan both have ratified the Hague Convention.”). Therefore, Rule 4(f), which bears no service timeline requirement, applies to Defendant Tanabe.

Plaintiffs therefore request that Your Honor withdraw the Rule 4(m) Call for Dismissal of Defendant Tanabe Orders docketed in the following cases:

<u>Case</u>	<u>Docket</u>	<u>ECF Number of Call for Dismissal Order</u>
BENJAMIN v. JANSSEN PHARMACEUTICALS, INC. et al	3:16-cv-01786-BRM-LHG	20
PARTINGTON v. JANSSEN PHARMACEUTICALS, INC. et al	3:16-cv-01787-BRM-LHG	19
ANDERS et al v. JANSSEN PHARMACEUTICALS, INC. et al	3:16-cv-01897-BRM-LHG	21
SWINNEY et al v. JANSSEN PHARMACEUTICALS, INC. et al	3:16-cv-01898-BRM-LHG	19

I thank the Court’s attention to this matter.

Respectfully,

/s/ Christopher A. Seeger
 Chris Seeger
Counsel for Plaintiffs

cc: Jeffrey Grand
 All counsel of record via ECF